Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Refer Reply To:
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[redacted]:

This responds to your recent letter to Charles Rossotti, Commissioner of Internal Revenue regarding section 457 of the Internal Revenue Code ("the Code"). Your letter requests information concerning the provisions in the recently enacted Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), Pub. L. No. 107-16, that may permit some changes to distributions from section 457 deferred compensation plans, including a provision permitting certain distributions to be rolled-over into an IRA, effective next year.

We do not have sufficient information regarding your employer's section 457 plan, including a copy of the plan, to definitively discuss your case and options under that plan. However, we can provide some general information that may be helpful to you, including the enclosed copy of the portion of the Congressional Conference Committee report discussing the current rollover rules and the new section 457 rollover provisions.

As the enclosed Congressional report notes, section 457 plan distributions made from state and local governmental plans after December 31, 2001 that qualify as "eligible rollover distributions" may be rolled over into an individual retirement plan (IRA) including one administered by a custodian different from your current 457 plan administrator, or, subject to certain restrictions, to other plans such as section 401(k) or 403(b) plans. Another section of this report, also included with this letter, notes that the new law amends section 457, effective after December 31, 2001, to provide "that amounts deferred under a section 457 plan of a State or local government are includible in income when paid" instead of "when paid or made available," thus authorizing governmental section 457 plans to include more flexible distribution provisions, if these plans are revised to permit such flexibility. However, these revisions do not become effective until 2002.

We have also enclosed a portion of IRS Publication 505, “Tax Withholding and Estimated Tax” which discusses the rollover and income tax withholding rules that currently apply to qualified plans, tax sheltered annuities described in section 403(b) of the Code, and, after 2001, eligible section 457(b) plans of state and local governmental entities. The “Eligible Rollover Distributions” section notes that an eligible rollover distribution is any distribution from a qualified pension plan or tax-sheltered annuity that is not either 1) a minimum required distribution or 2) one of a series of substantially equal periodic payments made over the participant’s life expectancy or a specified period of 10 or more years.

We trust this information will be helpful to you. If you need further information, please contact John Tolleris of my staff at (202) 622-6060.

Sincerely,

Robert D. Patchell
Acting Branch Chief, Qualified Plans Branch 2
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)